

# DECLARATION OF BRENDAN MCSHANE

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

RICHARD GIBSON, and HERIBERTO  
VALIENTE,

Case No. 2:23-cv-00140-MMD-DJA

**Plaintiff,**

v.

MGM RESORTS INTERNATIONAL,  
CENDYN GROUP, LLC, THE  
RAINMAKER GROUP UNLIMITED, INC.,  
CAESARS ENTERTAINMENT INC.,  
TREASURE ISLAND, LLC, WYNN  
RESORTS HOLDINGS, LLC.

**DECLARATION OF BRENDAN MCSHANE  
IN SUPPORT OF CERTAIN DEFENDANTS'  
MOTION TO PARTIALLY STAY  
DISCOVERY**

#### Defendants.

1 I, Brendan McShane, declare as follows:

2 1. I am partner with the law firm Latham & Watkins LLP, attorneys for Defendant  
3 Cendyn Group, LLC in connection with this action. I submit this declaration in support of Certain  
4 Defendants' Motion to Partially Stay Discovery. Unless otherwise stated, I have personal  
5 knowledge of the facts set forth below and, if called upon, can and will competently testify thereto.

6 2. As described in the parties' Joint Proposed Discovery Plan, ECF No. 111, the  
7 parties conducted the conference required by Federal Rule of Civil Procedure 26(f) on April 24,  
8 May 9, and May 10, 2023.

9 3. On April 14, 2023, in advance of the parties' Rule 26(f) conference, plaintiffs'  
10 counsel emailed defense counsel drafts of the following: Plaintiffs' First Set of Interrogatories to  
11 Operator Defendants; Plaintiffs' First Set of Interrogatories to Defendants Cendyn Group, LLC  
12 and the Rainmaker Group Unlimited, Inc.; Plaintiffs' First Set of Requests for Production of  
13 Documents to Operator Defendants; and Plaintiffs First Set of Requests for Production of  
14 Documents to Defendants Cendyn Group, LLC and the Rainmaker Group Unlimited, Inc.  
15 (collectively, "Draft Discovery Requests").

16 4. During the April 24, 2023 conference between the parties, counsel for the moving  
17 defendants took the position that discovery should be stayed pending defendants' Joint Motion to  
18 Dismiss (ECF 91), but offered as part of a compromise to answer two interrogatories and a request  
19 for production from the Draft Discovery Requests that plaintiffs sent on April 14, 2023.  
20 Defendants also offered to negotiate a Protective Order and ESI Protocol while the motion to  
21 dismiss was pending

22 5. On May 8, 2023, plaintiffs' counsel emailed defense counsel, attaching updated  
23 discovery requests ("Updated Discovery Requests") and indicating that those Updated Discovery  
24 Requests "are served upon [defendants]" via that email. In that same email, plaintiffs' counsel  
25 responded to defendants' proposal regarding discovery and counter-proposed that each defendant  
26 answer all of the interrogatories served and produce documents responsive to certain requests for  
27 production ("Requests") (Request Nos. 3, 4, 52, 53 and 54 for the Hotel Defendants and Request  
28 Nos. 3, 4, 5, 46, and 47 for defendants Cendyn and Rainmaker) by July 10, 2023. Plaintiffs'

1 counsel further proposed that the parties negotiate the responses and objections, search terms, and  
2 custodians for all other document requests by October 9, 2023. The following day, on May 9,  
3 plaintiffs' counsel further indicated during a phone conference that plaintiffs requested all  
4 defendants respond to Request No. 1 in addition to those Requests cited in their email.

5       6. During the May 9 and 10 conferences, the parties again discussed their positions  
6 regarding the appropriate scope of discovery pending resolution of defendants' motions to dismiss.  
7 Plaintiffs reiterated the position put forward in their May 8 email, and moving defendants reiterated  
8 their April 24 proposal. The parties conferred in good faith, but were unable to reach a resolution  
9 regarding the scope of discovery during the pendency of the motions to dismiss.

10        7. To assist the Court in evaluating the motion to stay discovery, true and correct  
11 copies of the following documents are provided:

12	Exhibit A	Email from A. Wolf to defense counsel, dated May 8, 2023
13	Exhibit B	Plaintiffs' First Set of Requests for Production of Documents to Operator Defendants
14	Exhibit C	Plaintiffs First Set of Requests for Production of Documents to Defendants Cendyn Group, LLC and the Rainmaker Group Unlimited, Inc.
15	Exhibit D	Plaintiffs' First Set of Interrogatories to Operator Defendants
16	Exhibit E	Plaintiffs' First Set of Interrogatories to Defendants Cendyn Group, LLC and the Rainmaker Group Unlimited, Inc.

17 I declare under penalty of perjury under the laws of the United States that the foregoing is  
18 true and correct, and that this Declaration was made this 22nd day of May 2023 in San  
19 Francisco, California.

/s/Brendan McShane  
Brendan McShane  
of Latham & Watkins LLP  
Counsel for Defendant Cendyn Group, LLC